

December 8, 2014

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION
BEFORE THE SECRETARY OF THE COMMISSION

In the Matter of:)
)
Union Electric Co.) Docket No. 50-483-LR
)
(Callaway Plant Unit 1))

**MISSOURI COALITION FOR THE ENVIRONMENT’S HEARING REQUEST
AND PETITION TO INTERVENE IN LICENSE RENEWAL PROCEEDING
FOR CALLAWAY NUCLEAR POWER PLANT**

I. INTRODUCTION

Pursuant to 10 C.F.R. §§ 2.309(c), 2.309(f)(1), and 2.309(f)(2), Missouri Coalition for the Environment (“MCE”) requests a hearing and seeks leave to intervene in the Nuclear Regulatory Commission’s (“NRC’s”) license renewal proceeding for the Callaway Unit 1 nuclear power plant, for the purpose of challenging the legal adequacy of NRC’s recently-issued Supplement 51 to the Generic Environmental Impact Statement for License Renewal of Nuclear Plants (Oct. 2014) (“License Renewal GEIS Supp. 51”).¹ MCE contends that under the National Environmental Policy Act (“NEPA”), License Renewal GEIS Supp. 51 does not provide the NRC with an adequate legal basis for re-licensing Callaway Unit 1 because it relies entirely for its evaluation of the environmental impacts of spent fuel storage and disposal on the Continued Storage of Spent Nuclear Fuel Rule (79 Fed. Reg. 56,238 (Sept. 19, 2014) (“Continued Spent Fuel Storage Rule”)) and the Generic Environmental Impact Statement for Continued Storage of

¹ License Renewal EIS Supp. 51 is accessible at <http://www.nrc.gov/reading-rm/doc-collections/nuregs/staff/sr1437/supplement51/>. The NRC published a notice of the issuance of License Renewal GEIS Supp. 51 on November 4, 2014. Letter from Brian Wittick, NRC, to Fadi Diya, Ameren Missouri Callaway, re: Notice of Availability of the Final Plant-Specific Supplement 51 to the Generic Environmental Impact Statement for License Renewal of Nuclear Plants Regarding Callaway Plan, Unit 1 (Nov. 4, 2014) (ML14252A805) (“Wittick Letter”). The Wittick Letter was posted on ADAMS November 6, 2014.

Spent Nuclear Fuel (NUREG-2157, September 2014) (“Continued Spent Fuel Storage GEIS”).
License Renewal GEIS Supp. 51 at 6-2 – 6-3.

While MCE seeks admission of its contention, MCE does not seek to litigate the substantive content of its contention in an adjudicatory hearing. Instead, MCE has already raised its concerns about the Continued Spent Fuel Storage Rule and the Continued Spent Fuel Storage GEIS in comments on draft versions of those documents, and the NRC has already either rejected or disregarded MCE’s comments in the final versions of the Rule and GEIS. MCE also has appealed the final versions to the U.S. Court of Appeals for the District of Columbia Circuit. *See Beyond Nuclear v. NRC*, Docket No. 14-1216 (filed Oct. 29, 2014).² The sole purpose of this contention is to lodge a formal challenge to the NRC’s complete and unqualified reliance, in the separate license renewal proceeding for Callaway Unit 1, on the legally deficient Continued Spent Fuel Storage Rule and Continued Spent Fuel Storage GEIS.

MCE submits its contention with the reasonable expectation that it will be denied, because the subject matter of the contention is generic. MCE respectfully submits that nevertheless, the filing of a contention is the only procedural means offered by Commission regulations for ensuring that any court decision resulting from MCE’s appeal of the generic Continued Spent Fuel Storage Rule and GEIS will also be applied to the individual Callaway Unit 1 license renewal proceeding, which relies on the Continued Spent Fuel Storage Rule and GEIS.³ In effect, this Hearing Request is a place-holder. Upon denial of MCE’s contention,

² As discussed below in Section II.A, *Beyond Nuclear v. NRC* was consolidated with four other cases and is now captioned *New York v. NRC*.

³ In this context, MCE notes that its contention is not accompanied by a petition for a waiver of 10 C.F.R. §§ 51.71(d), 51.95(c)(2), or any of the other regulations on which the Commission relies to bar members

MCE intends to immediately appeal the decision to the U.S. Court of Appeals and request consolidation with MCE's pending appeal of the Continued Spent Fuel Storage Rule and GEIS.

This Hearing Request is accompanied by the attached Motion to Re-open the Record and the attached standing declarations by MCE members Mark Haim and Mary Mosley.

II. DEMONSTRATION OF STANDING

MCE is the State of Missouri's independent citizens' environmental organization for clean water, clean air, clean energy, and a healthy environment. MCE works to protect and restore the environment through public education, public engagement, and legal action. *See <http://www.moenviron.org/about/who-we-are/>*. MCE seeks admission of its contention in order to protect its members' interest in a clean and healthy environment, including protection from the health and environmental hazards posed by generation of spent fuel at the Callaway nuclear power plant.

MCE has standing to intervene in this case because many of its members live, work, and own property within 50 miles of the Callaway reactor, and their interests may be affected by the results of the proceeding. *Virginia Electric and Power Co. (North Anna Nuclear Power Station, Units 2 and 2), ALAB-522, 9 NRC 54, 56 (1979)*. Their health, safety, property value, and means of livelihood could be adversely affected if the NRC permits Callaway to continue to operate for an extended period in a manner that is unsafe or harmful to the environment. MCE

of the public from litigating generic NEPA issues in individual licensing proceedings. No purpose would be served by such a waiver, because MCE does not seek an adjudicatory hearing on the NRC's generic environmental findings. Instead, MCE's only purpose in raising its contention is to ensure that any decision by the U.S. Court of Appeals regarding the validity of the Continued Spent Fuel Storage Rule and GEIS will also be applied to this proceeding, in which the NRC relies on them.

has attached declarations from two individual MCE members who have authorized MCE to bring this legal action on their behalves: Mark Haim and Mary Mosley.

III. FACTUAL AND PROCEDURAL BACKGROUND

A. Waste Confidence and Continued Spent Fuel Storage Proceedings

For several decades, the NRC relied on its “Waste Confidence” Rule and Temporary Storage Rule to address, in reactor licensing and re-licensing proceedings, safety and environmental issues associated with spent fuel storage and disposal. In 2010, the NRC published updates to the Waste Confidence rule (the “Waste Confidence Update”) and Temporary Storage Rule, which were challenged by several state governments and environmental organizations. Waste Confidence Decision Update, 75 Fed. Reg. 81,037 (Dec. 23, 2010) and Temporary Storage Rule, 75 Fed. Reg. 81,032 (Dec. 23, 2010). In *New York v. NRC*, 681 F.3d 471 (D.C. Cir. 2012) (“*New York I*”), the U.S. Court of Appeals vacated the Waste Confidence Update and Temporary Storage Rule, and remanded them to the NRC for further proceedings.

On July 9, 2012, following on the Court’s decision, MCE submitted a contention in this proceeding, asserting that in the absence of a valid GEIS for spent fuel storage and disposal, the environmental impacts and alternatives must be analyzed in the individual licensing proceeding. Intervenor’s Motion for Leave to File a New Contention Concerning Temporary Storage and Ultimate Disposal of Nuclear Waste at Callaway Nuclear Power Plant. MCE also petitioned the NRC to suspend the Callaway Unit 1 re-licensing proceeding pending the agency’s compliance with the Court’s remand. At the request of MCE and other petitioners, the NRC subsequently suspended licensing and re-licensing decisions for all reactors, including Callaway Unit 1.

Calvert Cliffs 3 Nuclear Power Project, LLC et al., CLI-12-16, 76 NRC 63 (2012) (“CLI-12-16”). As instructed by the Commission in CLI-12-16, the Atomic Safety and Licensing Board (“ASLB”) held MCE’s contention in abeyance pending further order of the Commission. Memorandum and Order (Suspending Date for Submission of Reply Pleading) (Aug. 8, 2012).

Then, on September 13, 2013, in response to the Court’s remand in *New York I*, the NRC published a proposed rule entitled Waste Confidence – Continued Storage of Spent Nuclear Fuel, 78 Fed. Reg. 56,776 (Sept. 13, 2013) (“Proposed Waste Confidence Rule”). The NRC also published a Draft Waste Confidence GEIS (NUREG-2157, noticed at 78 Fed. Reg. 56,621 (Sept. 13, 2013)).

On December 20, MCE joined thirty-two other environmental organizations in submitting Comments by Environmental Organizations on Draft Waste Confidence Generic Environmental Impact Statement and Proposed Waste Confidence Rule and Petition to Revise and Integrate All Safety and Environmental Regulations Related to Spent Fuel Storage and Disposal (ADAMS Accession No. ML14030A152, corrected on Jan. 7, 2014 in ML14024A297) (“MCE et al. Comments”). The MCE et al. Comments were supported by expert declarations by Dr. Arjun Makhijani, David Lochbaum, Dr. Gordon Thompson, and Mark Cooper (ADAMS Accession No. ML14030A152). The comments and supporting declarations made detailed and comprehensive criticisms of the Proposed Waste Confidence Rule and Draft Waste Confidence GEIS, charging that they were inadequate to satisfy NEPA or the Atomic Energy Act on both legal and technical grounds. Other organizations, as well as state and local governments, also filed comments critical of the Proposed Rule and Draft GEIS.

Despite these criticisms, in September 2014, the NRC published the Final Continued

Spent Fuel Storage Rule and Final Continued Spent Fuel Storage GEIS, without changing its environmental analysis in any significant respect. The Final Continued Spent Fuel Storage Rule also omitted “Waste Confidence” safety findings required by the Atomic Energy Act. Upon issuance of the Rule and GEIS, the Commission lifted the suspension of licensing and re-licensing for Callaway Unit 1 and other reactors. *Calvert Cliffs 3 Nuclear Power Project, LLC et al.*, CLI-12-08, __ NRC __ (August 26, 2014). The ASLB subsequently dismissed MCE’s contention regarding spent fuel storage and disposal impacts and terminated the proceeding. *Union Electric Co. (Callaway Plant, Unit 1)*, LBP-14-12, __ NRC __ (Sept. 8, 2014).

MCE took two legal actions in response to the NRC’s issuance of the Final Continued Spent Fuel Storage Rule and the Continued Spent Fuel Storage GEIS. First, MCE filed a contention and petition to suspend re-licensing of Callaway Unit 1, charging that the NRC may not re-license Unit 1 unless and until it makes “Waste Confidence” findings regarding the safety of spent fuel disposal. Missouri Coalition for the Environment’s Motion for Leave to File a New Contention Concerning the Absence of Required Waste Confidence Findings in the Relicensing Proceeding at Callaway 1 Nuclear Power Plant (Sept. 29, 2014); Petition to Suspend Final Decisions in all Pending Reactor Licensing Proceedings Pending Issuance of Waste Confidence Safety Findings (Sept. 29, 2014).⁴

Second, MCE joined seven other environmental organizations in seeking judicial review of the Rule and GEIS by the U.S. Court of Appeals for the District of Columbia Circuit under NEPA, the Atomic Energy Act, and the Administrative Procedure Act, *inter alia*. *Beyond*

⁴MCE’s contention and Petition to Suspend are still pending.

Nuclear et al. v. NRC, No. 14-1216 (filed Oct. 29, 2014). The case was consolidated with similar appeals by the States of New York, Connecticut, and Vermont; the Prairie Island Indian Community; and Natural Resources Defense Council. See *New York et al. v. NRC*, Docket Nos. 14-1210, 14-1212, 14-1216, and 14-1217 (Consolidated) (filed October 31, 2014) (“*New York II*”). The parties are now awaiting a briefing schedule.

B. NEPA Review for Callaway Unit 1 License Renewal Proceeding

In 2011, Ameren Missouri (“Ameren”) applied for a twenty-year renewal of the operating license for Callaway Unit 1. Following the Court of Appeals’ decision in *New York I*, the proceeding was suspended for two years while the NRC responded to the Court’s remand. The NRC also delayed completion of its environmental review for Callaway Unit 1, so that it could incorporate into License Renewal GEIS Supp. 51 the generic conclusions of its final rule and GEIS on remand from the Court.

On November 4, 2014, following publication of the Final Continued Spent Fuel Storage Rule and the Continued Spent Fuel Storage GEIS, the NRC publicly announced the availability of License Renewal GEIS Supp. 51. See Wittick Letter. The letter was posted on ADAMS on Nov. 6, 2014.

IV. CONTENTION

A. Statement of Contention

For all of the reasons stated in MCE et al.’s Comments, the NRC lacks a lawful basis under NEPA for re-licensing Callaway Unit 1. To summarize, License Renewal GEIS Supp. 51 incorporates the generic conclusions of the Continued Spent Fuel Storage Rule and GEIS. And, the Rule and GEIS suffer from the following failures:

- In blatant violation of NEPA and the Court’s decision in *New York I*, the Continued Spent Fuel Storage GEIS fails to examine the probability and consequences of failure to site a repository. Instead of examining the risk of failing to site a repository, the GEIS rationalizes the risk away, by arbitrarily assuming that spent fuel will be protected by “institutional controls” for an infinite period of time at reactor sites. This assumption is not only absurd and inconsistent with the Nuclear Waste Policy Act (“NWPA”), but it also defeats the Court’s purpose of forcing NRC to reckon with the environmental consequences of its failure to site a repository.
- The GEIS fails to acknowledge that the Continued Spent Fuel Storage Rule is a licensing action, and therefore it distorts the statement of purpose and need for the rule as relating to administrative rather than environmental concerns. As a result, the GEIS also mischaracterizes the alternatives that must be considered. Instead of evaluating alternatives related to storage and disposal of spent fuel, the GEIS examines alternatives related to the administrative question of how to prepare an EIS. The result is a farcical cost-benefit analysis that utterly fails to address alternatives for avoiding or mitigating the environmental impacts of storing spent fuel or siting a repository.
- The GEIS’ analysis of the environmental impacts of extended spent fuel storage ignores the fact that NRC knows very little about the behavior of spent fuel in long-term or indefinite storage conditions, especially the potentially significant effects of long-term dry cask storage on high burnup fuel integrity. In violation of NEPA, the NRC makes no attempt to quantify these uncertainties.
- The GEIS fails to fully consider the environmental impacts of spent fuel pool leaks and fires. In violation of NEPA, the GEIS relies upon incomplete data, adopts a flawed concept of risk, ignores a range of causes for accidents, and fails to assess certain site-specific features that could increase the impacts of a leak or fire.
- In violation of NEPA, the GEIS makes no attempt to show how the environmental impacts associated with the Continued Spent Fuel Storage Rule will be quantified and incorporated into cost-benefit analyses for nuclear reactors. Although spent fuel disposal and long-term storage costs are high enough to tip the balance of a cost-benefit analysis for reactor licensing away from licensing, nowhere does the NRC explain how it will take these costs into account in reactor licensing decisions.
- In violation of NEPA, the GEIS fails to support the limited conclusions in the Continued Spent Fuel Storage Rule and GEIS regarding the technical feasibility of spent fuel disposal.
- The NRC has splintered the analysis of environmental impacts associated with storage and disposal of spent fuel into an array of safety findings and environmental analyses. While the issues covered by these separate findings and analyses overlap and involve

cumulative impacts, the NRC refuses to integrate them. The NRC also refuses to correct inconsistencies between them.

B. Statement of Basis for the Contention

The basis for MCE's contention is provided in the MCE et al. Comments and attachments (including the declarations of Dr. Arjun Makhijani, Dr. Gordon Thompson, David Lochbaum, and Mark Cooper).

C. Demonstration that the Contention is Within the Scope of the Proceeding

The contention is within the scope of the proceeding because it challenges the adequacy of the NRC's NEPA review for the re-licensing of Callaway Unit 1.

D. Demonstration that the Contention is Material to the Findings the NRC Must Make to License This Reactor

The contention is material to the findings that the NRC must make in order to license this reactor because it asserts that the environmental findings in the Continued Spent Fuel Storage Rule and the Continued Spent Fuel Storage GEIS are not supported and are legally deficient.

E. Concise Statement of the Facts or Expert Opinion Supporting the Contention, Along with Appropriate Citations to Supporting Scientific or Factual Materials

The statements of fact or expert opinion supporting the contention are set forth in the MCE et al. Comments and supporting declarations of Dr. Arjun Makhijani, Dr. Gordon Thompson, David Lochbaum, and Mark Cooper.

F. A Genuine Dispute Exists with the Applicant on a Material Issue of Law or Fact

This contention raises a genuine dispute with both the applicant and the NRC regarding whether the NRC has satisfied NEPA for the purpose of renewing the operating license for

Callaway Unit 1.

V. THE CONTENTION IS TIMELY PURSUANT TO 10 C.F.R. §§ 2.309(c) and 2.309(f)(2)

The contention meets the timeliness requirements of 10 C.F.R. § 2.309(c) and § 2.309(f)(2), which call for a showing that:

- (i) The information upon which the amended or new contention is based was not previously available;
- (ii) The information upon which the amended or new contention is based is materially different than information previously available; and
- (iii) The amended or new contention has been submitted in a timely fashion based on the availability of the subsequent information.

First, the information on which the contention is based – License Renewal GEIS Supp. 51 – was not publicly noticed until the Wittick Letter was posted on ADAMS November 6, 2014.

Second, the information in License Renewal GEIS Supp. 51 is materially different from the information in the draft version of License Renewal GEIS Supp. 51, because the draft was published in January 2014, before either the Continued Spent Fuel Storage Rule or the GEIS had been issued. Supplement 51 to the Generic Environmental Impact Statement for License Renewal of Nuclear Plants (Draft for Comment (Jan. 2014)) (ML14041A373).

Third, the contention is timely because it has been submitted within 30 days of November 6, 2014, the date the NRC posted the Wittick Letter on ADAMS. *Shaw AREVA MOX Services* (Mixed Oxide Fuel Fabrication Facility), LBP-08-11, 67 NRC 460, 493 (2008) (noting that “[m]any times,” ASLBs have selected 30 days as a presumptively acceptable time period for contentions).

VI. CONSULTATION CERTIFICATION PURSUANT TO 10 C.F.R. § 2.323(b)

Undersigned counsel Henry Robertson certifies that on December 4, 2014, he contacted counsel for the applicant and the NRC staff in an attempt to obtain their consent to this Hearing Request. Counsel for both Ameren and the Staff stated that they would oppose the Hearing Request.

VII. CONCLUSION

For the reasons stated, MCE respectfully requests that its contention be admitted.

Respectfully submitted,

[Electronically signed by]

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December 8, 2014

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD PANEL

_____))
In the Matter of))
)) Docket No. 50-483-LR
UNION ELECTRIC CO.))
(Callaway Nuclear Power Plant, Unit 1)))
_____)

DECLARATION OF MARK HAIM

Under penalty of perjury, I, Mark Haim, declare as follows:

1. I make this declaration of my own personal knowledge. If called to testify as a witness, I could and would testify competently regarding its contents.

2. I am a current member of Missouri Coalition for the Environment (MCE). I agree with MCE’s mission of protecting and preserving the environment through education, public engagement, and legal action. I believe my health and well-being depend upon the health of the environment in the region where I live. I have authorized MCE to submit a contention on my behalf challenging the NRC’s failure to fully and adequately assess the environmental impacts of storing and disposing of the spent fuel that will be generated by the Callaway Nuclear Power Plant, Unit 1, if it is relicensed.

3. I know that MCE submitted comments to the U.S. Nuclear Regulatory Commission (“NRC”) in 2013 regarding the NRC’s proposed rule entitled “Waste Confidence Decision - Continued Storage of Spent Nuclear Fuel,” which was published at 78 Fed. Reg. 56,776 on September 13, 2013 and its accompanying “Waste Confidence Generic Environmental Impact Statement,” published the same day.

4. I live at 1402 Richardson Street, Columbia, MO 65201. My home lies 32 miles from the Callaway Unit 1 nuclear reactor. This is less than the fifty-mile radius distance at which the U.S. Nuclear Regulatory Commission (“NRC”) presumes a reactor accident will cause harm to my health and safety.

5. I am concerned about the health and environmental risks posed by the spent fuel that will be generated by Callaway Unit 1 if it is relicensed. I am aware that Congress has established a policy that the spent fuel should be removed from the Callaway nuclear plant site to a repository for permanent disposal. But, I am concerned that permanent disposal of spent fuel may not be feasible. I am also concerned that the government will not find sufficient capacity in a repository or multiple repositories to accommodate the spent fuel to be generated by Callaway Unit 1. For these reasons, I am concerned that the Callaway nuclear plant site may become a *de facto* long

term spent fuel storage depot or even waste disposal site. I am concerned that spent fuel stored for a lengthy period at the Callaway site may leak into the environment and harm my health and threaten my safety. Additionally, I am concerned about the health and safety of future generations in my family, and protection of the environment.

6. I am aware that NRC must conduct a full environmental review whenever it licenses or re-licenses a nuclear power plant. However, I am concerned that NRC has not adequately evaluated the environmental, health, and safety consequences of storing spent nuclear fuel at the Callaway nuclear plant site during the time following the licensed life of the reactor. In the absence of adequate environmental analyses regarding the storage of spent fuel, I do not have confidence that my health and safety or the integrity of my environment will be protected from the adverse effects of exposure to spent reactor fuel.

7. I have authorized MCE to file a contention that seeks to raise my concerns in this proceeding. I believe this contention will redress my concerns by forcing the NRC to either conduct the required environmental analyses or deny the relicensing application for Callaway Unit 1.

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I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge, information and belief.


Mark Haim

12/3/14
Date

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD PANEL

In the Matter of)	
)	
UNION ELECTRIC CO.)	Docket No. 50-483-LR
(Callaway Nuclear Power Plant, Unit 1))	
)	

DECLARATION OF MARY MOSLEY

Under penalty of perjury, I, Mary Mosley, declare as follows:

1. I make this declaration of my own personal knowledge. If called to testify as a witness, I could and would testify competently regarding its contents.

2. I am a current member of Missouri Coalition for the Environment (MCE). I agree with MCE's mission of protecting and preserving the environment through education, public engagement, and legal action. I believe my health and well-being depend upon the health of the environment in the region where I live. I have authorized MCE to submit a contention on my behalf challenging the NRC's failure to fully and adequately assess the environmental impacts of storing and disposing of the spent fuel that will be generated by the Callaway Nuclear Power Plant, Unit 1, if it is relicensed.

3. I know that MCE submitted comments to the U.S. Nuclear Regulatory Commission ("NRC") in 2013 regarding the NRC's proposed rule entitled "Waste Confidence Decision - Continued Storage of Spent Nuclear Fuel," which was published at 78 Fed. Reg. 56,776 on September 13, 2013 and its accompanying "Waste Confidence Generic Environmental Impact Statement," published the same day.

4. I live at 1010 Vine Street, Fulton, MO 65251. My home lies 11 miles from the Callaway Unit 1 nuclear reactor. This is less than the fifty-mile radius distance at which the U.S. Nuclear Regulatory Commission ("NRC") presumes a reactor accident will cause harm to my health and safety.

5. I am concerned about the health and environmental risks posed by the spent fuel that will be generated by Callaway Unit 1 if it is relicensed. I am aware that Congress has established a policy that the spent fuel should be removed from the Callaway nuclear plant site to a repository for permanent disposal. But, I am concerned that permanent disposal of spent fuel may not be feasible. I am also concerned that the government will not find sufficient capacity in a repository or multiple repositories to accommodate the spent fuel to be generated by Callaway Unit 1. For these reasons, I am concerned that the Callaway nuclear plant site may become a *de facto* long

term spent fuel storage depot or even waste disposal site. I am concerned that spent fuel stored for a lengthy period at the Callaway site may leak into the environment and harm my health and threaten my safety. Additionally, I am concerned about the health and safety of future generations in my family, and protection of the environment.

6. I am aware that NRC must conduct a full environmental review whenever it licenses or re-licenses a nuclear power plant. However, I am concerned that NRC has not adequately evaluated the environmental, health, and safety consequences of storing spent nuclear fuel at the Callaway nuclear plant site during the time following the licensed life of the reactor. In the absence of adequate environmental analyses regarding the storage of spent fuel, I do not have confidence that my health and safety or the integrity of my environment will be protected from the adverse effects of exposure to spent reactor fuel.

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I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge, information and belief.


Mary Mosley


Date